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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,560	10/16/2003	Jacob Tepper	PETRA 3.0-032	7134
28885	7590	01/04/2005	EXAMINER	
WEINGRAM & ASSOCIATES P.C. P.O. BOX 927 MAYWOOD, NJ 07607			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 01/04/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/687,560

Applicant(s)

TEPPER ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/15/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-14, 16, 20-22, 24-32, 34 and 38-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markham et al (5,947,061) in view of Markham et al (6,129,053), in view of McClung (5,799,616) and Mauldin in (5,813,366) further in view of Schaefer (2,024,064).

In regard to claim 1, Markham et al ('061) discloses a consumable pet chew comprising a formed, three-dimensional body of chewable material, said body having an outer surface and at least one recess extending generally perpendicularly from said outer surface (see e.g. Figures 3 and 4), said recess having walls and an edge at said outer surface, said recess defining a receptacle within said body, and a filling comprising an edible substance fixedly positioned in said receptacle (since Markham ('061) discloses the filling is held by friction, adhesive or adhesion e.g. see the abstract). Markham et al ('053), McClung and Mauldin are relied on as further evidence of pet foods associated with pet toys/chews. Claim 1 differs from Markham ('061), if at all, in the recitation that the recess has a "machined edge". This appears to mean that the edge of the recess was formed by a machine. It is not clear that the phrase means anything else. Markham ('061) discloses that the three dimensional bodies can be rawhide, rubber or plastic. Markham ('061) does not disclose how the recesses are

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formed. They can only be formed in one of two ways. That is, they can be machine formed or molded. Whichever technique is used, the final result is a recess, which recesses would not appear to be specifically different from each other. Markham ('061) could conceivably be employed under 35 USC 102, but the examiner will err on the side of caution and employ 35USC 103. How the recesses have been formed is seen to have been an obvious matter of choice. As evidenced by Schaefer, it is notoriously well known, for example, to drill recesses in rawhide and to thus modify Markham et al ('061), if necessary, and have provided a machine edge would therefore have been obvious. In regard to claim 2, as noted above, Schaefer teaches it was well established to provide recesses or bores by drilling including drilling in rawhide. In regard to claims 4-13, Markham et al ('061) respectively discloses cylindrical bones (Fig. 3), 3-D cavities, cavities that only go partially through (Fig. 4), the chewable material (e.g. rawhide and plastics), the filling material (e.g. peanut butter), the use of whole pieces as filling material (e.g. rawhide and dog biscuits), the use of discrete pieces as filling material (e.g. vegetable pieces), the use of a processed mass as the filling material (e.g. peanut butter, the filling substantially level with the (e.g. Fig. 4)) and the filling extending outwardly from the receptacles (e.g. Fig. 4). In regard to claims 14 and 16, which recites that at least one of the chewable material and filling is flavored and scented, Markham et al ('061) discloses it was well established to provide chewable materials with odors and flavoring materials. In regard to claim 20, as noted above, Markham et al ('061) discloses friction fit for the fillings. In regard to claim 21, which recites the filling is preformed, Markham et al ('061) shows various preformed fillings (e.g. Fig. 4 and Fig.

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13). In regard to claim 22, which recites the method of making a consumable pet chew, the claim is rejected for the reasons given above in regard to claim 1. Markham et al ('061) the forms an edible chewable material into a three dimensional body, provides the body with at least one recess, forms an edible filling and fixedly positions the filling in the receptacle. As noted above, it is not clear how Markham et al ('061) forms the recess. However, in view of the art, taken as a whole, to "remove" a portion of a body to create a recess would have been obvious in view of Schaefer. Claims 24-32 and 34, which are the method equivalents of claims 4-11 and 14-16, respectively are rejected for the reasons given above in regard to claims 4-11, 14, and 16. Claims 38 and 39 recite the filling is preformed and is friction fit which has been addressed above in regard to claims 20 and 21, respectively. In regard to claim 40, which recites an edible glue, Markham et al ('061) teaches using an edible adhesive to fixedly position the filling. In regard to claim 41 which recites a removable covering to fixedly position a filling, McClung ('616), in Fig. 20A and column 9, paragraph 7, also discloses the equivalency of a friction fit and cover to fixedly position a filling and to modify Markham et al and substitute one conventional fixing means for another conventional fixing means for its art recognized and applicant's intended function is seen to have been obvious.

Claims 3 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Chill (5,595,142), Venable (1,593,858) and Zinder (4,141,578).

Claims 3 and 23 recite that the walls are "scored". As disclosed, "scored" is defined as notched or scratched to enhance retention of the filling (page 5, paragraph 2). Markham et al ('061) employs friction (column 4, paragraph 3) or uneven wall surfaces (column 5, paragraph 2) to help retain the fillings. As evidenced by Chill, Venable and Zinder, it is well established that when one is attempting to secure a material to a surface, to enhance retention or securement, one should notch or roughen the surface. To modify Markham et al ('061) and substitute one conventional means to enhance retention for another conventional means to enhance retention would therefore have been obvious.

Claims 15, 17-19, 33 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Perlberg et al (6,223,693).

Claims 15 and 17 recite that at least one of the chewable material and the filling comprises a colorant, and at least one of a nutrient or pharmaceutical compound, respectively. As evidenced by Perlberg, it is conventional to provide a chewable product with colorant and nutritional supplements and/or drugs. To modify Markham et al ('061) and provide the product with these conventional additives for their art recognized and applicant's intended function would therefore have been obvious. In regard to claims 18 and 19, which recite conventional nutrients and pharmaceutical compounds, once it was known to provide such additives to a chewable material, the particular conventional nutrients or pharmaceutical compounds selected to be added to the chewable product is seen to have been an obvious matter of choice and function of^a

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the functional results derived from the additives. Claims 33 and 35-37 are the method equivalents of claims 15 and 17-19 and are rejected for the same reasons as claims 15 and 17-19. In regard to claim 42, since Markham et al discloses friction, adhesives or adhesion, to fix the filling, whether the material used to fix the filling is thermosetting or not is seen to have been an obvious matter of choice. Applicants are not the inventor of thermosetting edible compounds. In regard to claim 43, which recites twisting slices of meat to use as a filling material, once it was known to provide edibles as fillings in the recesses of a chewable material, the particular conventional and pet favorable material selected is seen to have been an obvious matter of choice. Note that Markham et al ('061) teaches twisting or coiling rawhide so that it fits in a bore in a chewable material. Note further that applicants are not the first to associate dog treats such as meat with a recess in an article (column 2, paragraph 5). In regard to claim 44, to further shape the top of the filling after the filling step is seen to have been an obvious matter of choice and an obvious function of whether the particular filling material is shapeable.

Claims 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 22 above, and further in view of Lawson (5,007,879) and Axelrod (5,941,197).

Claim 45 recites the product is dried and sterilized. It is notoriously old to sterilize foods since most foods do not keep long without sterilization. Both Lawson and Axelrod discuss sterilizing conditions. Lawson also teaches drying. To modify the combination and dry and sterilize for its art recognized and applicant's intended function

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would have been obvious. Similarly, it would have been obvious to wrap a product, any food product. Axelrod mentions moisture proof packaging.

The remainder of the references cited on the USPTO 892 forms are cited as art of interest.

Any inquiry concerning this communication from the examiner should be directed to Steven L. Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S.L. Weinstein/dh
December 15, 2004

Steven Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
1/4/05